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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY MICHAEL GONZALEZ,

Defendant and Appellant.

B219656

(Los Angeles County
Super. Ct. No. PA053439)

APPEAL from orders of the Superior Court of Los Angeles County,
Ronald S. Coen, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M.
Roadarmel, Jr. and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff and
Respondent.

Defendant Anthony Michael Gonzalez appeals from postjudgment rulings revoking his probation and ordering execution of a previously stayed seven-year state prison sentence, contending the court abused its discretion in declining to reinstate probation. We affirm the rulings.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Original Charges and Defendant's Plea and Sentence

On November 18, 2005, defendant was charged by information with committing several offenses against his father, Hector Gonzalez: Elder abuse (Pen. Code, § 368 subd. (b)(1), count 1),¹ assault with a deadly weapon (a pipe) (§ 245, subd. (a)(1), count 2) and making a criminal threat (§ 422, count 3). As to counts 1 and 3, the information specially alleged a deadly weapon enhancement (§ 12022, subd. (b)(1)). As to count 2, the information specially alleged a great bodily injury enhancement (§ 12022.7, subd. (c)). Defendant was also charged with battery with injury on a police officer (§ 243, subd. (c)(2), count 4), battery with injury on emergency personnel (§ 243, subd. (c)(1), count 5) and misdemeanor vandalism (§ 594, subd. (a), count 6) of a hotel.

On March 7, 2006, pursuant to a negotiated agreement, defendant pleaded guilty to assault with a deadly weapon (count 2), battery with injury on a police officer (count 5) and obstructing or resisting an executive officer in the performance of official duties (§ 69, amended count 7).² The People agreed to request the remaining counts and special allegations be dismissed at the time of sentencing.

On March 22, 2006, defendant was sentenced in accordance with the terms of the plea agreement to seven years in state prison; execution of the sentence was stayed; and defendant was placed on five years formal probation (Los Angeles Superior Court

¹ Statutory references are to the Penal Code, unless otherwise indicated.

² As part of his negotiated plea, defendant agreed to a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754), thereby allowing the trial court to consider the dismissed counts in setting the restitution amount and waived his presentence custody credits. Defendant also waived his right to be sentenced by the same judicial officer who accepted his plea. (*People v. Arbuckle* (1978) 22 Cal.3d 749.)

No. PA053439).³ The remaining charges and special allegations were dismissed on the People's motion.

2. Defendant's Arrest for Driving Under the Influence and Admitted Violation of Probation

On November 21, 2006, defendant was arrested for misdemeanor driving under the influence (Veh. Code, § 23152, subd. (a)). Defendant's probation was summarily revoked, and he was remanded into custody without bail pending a probation violation hearing. At the probation violation hearing on February 28, 2007, defendant waived his rights to a probation revocation hearing and admitted he had violated probation. After finding defendant in violation of probation, the court reinstated probation, with modified terms and conditions.

4. Defendant's Arrest for Drug Possession, Admitted Violation of Probation and Sentencing Hearing

On April 16, 2009, the trial court summarily revoked defendant's probation as a result of his arrest on July 25, 2008 for possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)). On September 4, 2009, defendant waived his rights to a probation revocation hearing and admitted he had violated probation. After finding defendant in violation of probation, the court scheduled a sentencing hearing, and terminated probation in the misdemeanor driving under the influence case (case No. 6VY05308).

On October 10, 2009, in considering whether to order execution of the previously stayed prison sentence or to reinstate probation, the trial court heard the testimony of two witnesses on defendant's behalf.⁴ James L. White testified he was the resident manager of Sober Living Halfway House, where defendant had been living for the past 14 months. According to White, during that time defendant had complied with all terms and

³ Case numbers refer to Los Angeles Superior Court cases.

⁴ The trial court also stated it had read and considered defendant's "supplemental memorandum" as well as "a number of other papers," concerning defendant's current employment, attendance at Alcoholics Anonymous meetings and other treatment, which are not part of the record on appeal.

conditions of his probation. Rex Olliff testified he was defendant's friend, coworker and sponsor for Alcoholics Anonymous over the last 15 months, during which defendant had been continuously employed, regularly attended Alcoholics Anonymous meetings and refrained from ingesting drugs and alcohol.

Defense counsel also made a statement to the court on defendant's behalf, having attended chemical dependency group meetings with defendant since the summer of 2008. Counsel informed the court that defendant joined the group when defendant was mourning his father's death, which had occurred shortly before defendant's arrest for cocaine possession in July 2008. Counsel maintained defendant's bereavement did not excuse his criminal conduct, but may help to explain it. Counsel described defendant's progress toward rehabilitation and urged that defendant be reinstated on probation. Defendant also made a statement on his own behalf, requesting that he be allowed to continue with his current treatment and recovery efforts.

The trial court declined to reinstate probation. The court found the statements of counsel and defendant unpersuasive under the circumstances, observing that everyone has to cope with the loss of a parent, and this was defendant's second probation violation after having previously benefited from reinstatement on probation. The court noted defendant had been advised in earlier proceedings that a future probation violation would likely result in a state prison sentence. Accordingly, the court determined defendant was not a suitable candidate for reinstatement on probation.⁵ It ordered into effect the previously stayed aggregate state prison sentence of seven years.⁶

⁵ According to the probation officer's report, before entering his plea in case No. PA053439, defendant was convicted in 1998 and in 2005 for misdemeanor driving under the influence, and in 1998 for driving on a suspended license.

⁶ On the People's motion the trial court dismissed the substantive offense underlying the probation violation (possession of cocaine base).

DISCUSSION

The Trial Court Did Not Abuse Its Discretion in Declining To Reinstate Probation and Ordering Defendant To Serve the Previously Stayed State Prison Sentence

A decision to revoke probation after the defendant has failed to comply with its terms and conditions rests within the broad discretion of the trial court: Pursuant to section 1203.2, subdivision (a), “a court is authorized to revoke probation ‘if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his [or her] probation’” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 440.) “It has been long recognized that the Legislature, through this language, intended to give trial courts very broad discretion in determining whether a probationer has violated probation.” (*Id.* at p. 443.) “[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation.” (*People v. Lippner* (1933) 219 Cal. 395, 400.)

The trial court’s decision not to reinstate probation and to order into effect the previously imposed and stayed state prison sentence was a proper exercise of discretion. The probation violation itself was a drug offense that supported revocation of probation. In addition, the court properly considered defendant’s prior performance on probation. Given defendant’s lengthy history of substance abuse, and poor performance on probation, the court did not abuse its discretion in concluding reinstating probation was not appropriate.

DISPOSITION

The orders are affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.